Circuit Court, E. D. Louisiana.

SEIGNOURET *v.* HOME INS. CO. ET AL.

The capital stock of a corporation cannot be reduced except by express legislative authority.

A statute giving authority to stockholders to make modifications, additions or changes in their act of incorporation, or to dissolve it, with the assent of three-fourths of the stock, does not confer upon them power to reduce the capital stock.

IN CHANCERY.

E. H. Farrar and *E. B. Kruttschnitt*, for complainants.

Chas. B. Singleton, *Richard H. Browne*, and *B. F. Choate*, for defendants.

The opinion of the court was delivered by

PARDEE, J.—The suit is brought to restrain the Home Insurance Company from reducing its capital stock. The question is one of the power of the company, and not of the propriety of its proposed action. It is well-settled corporation law, "that a corporation has no implied authority to alter the amount of its capital stock where the charter has definitely fixed the capital at a certain sum. The shares of a corporation can neither be increased nor diminished in number, or in their nominal value, unless this be expressly authorized by the company's charter." Morawetz Priv. Corp., § 230. See Tayl. Priv. Corp., § 133; Green's Brice's Ultra Vires 158; *Granger's Life Ins. Co.* v. *Kamper*, 73 Ala. 325. And it is understood that the same law prevails in Louisiana. See *Percy* v. *Millaudon*, 3 La. 569. Article 239 of the constitution of Louisiana prohibits increase of stock of corporations, except in pursuance of general laws. See, also, act 26th of 1882, of the Laws of Louisiana, specifically providing the mode and manner by which the stock of corporations may be increased. See, also, section 693, Rev. St. La. From these Louisiana authorities it seems clear that the authority to increase the capital stock of a corporation must be express. It would also seem that, as the constitution and the law thereunder provide for the increase of the stock, but are silent as to a decrease, the power to decrease the stock of a corporation was intentionally denied.

All the authorities examined, and the nature of things, are to the effect that a decrease of capital stock affects injuriously more parties

and interests than would an increase; increase of capital being generally considered to be beneficial to shareholders and creditors alike—to the former as tending to diminish and not to add to their individual risks; to the latter as increasing the amount of their security. See Green's Brice's Ultra Vires 160.

In *Percy* v. *Millaudon, supra*, Judge MARTIN, speaking of the attempted reduction of the capital of the Planters' Bank, says: "Creditors and customers have a claim to the preservation of the capital in its original integrity, for the faith of which they accept the notes of the institution, deposit their money, and lodge paper for collection. So has the public, on account of the advantages which the legislature has stipulated the bank should afford, as a consideration for the immunities and privileges which the charter confers. So have the stockholders, on account of the profits which they have a right to expect on the investments they have respectively made."

I do not understand counsel for defendant to seriously deny that the authority to increase or decrease the amount of capital stock of a corporation must be express; but he claims that to corporations created under the general law, as the Home Insurance Company was, the power to increase or diminish stock is given by section 687, Rev. St. La., which reads:

"It shall be lawful for the stockholders of any corporation, at the general meeting convened for that purpose, to make any modifications, additions, or changes in their act of incorporation, or to dissolve it with the assent of three-fourths of the stock represented at such meeting; any such modification, addition, change, or dissolution shall be recorded as required by the preceding section."

And he contends that his construction of the power given in said section has been sanctioned by long-continued practice and usage among the corporations of the state, and the case proves that a number of leading insurance companies in the city of New Orleans, under such construction, have either increased or decreased their capital stock. Some have done both. The legislative construction of section 687 can be found in the proviso of section 693, "provided that nothing in this act shall be so construed as to authorize an increase in the capital stock of any railroad company." The judicial construction should be found in the reports of adjudged cases, but an examination of the Louisiana Reports shows no case where the question has been raised. It is a fair inference, then, that in every

case where there has been an increase or decrease of capital stock, under authority claimed to be given by section 687, there has been unanimous consent of stockholders and creditors, which makes a very different case from the present one.

While the Louisiana courts have not been called on to determine whether an increase or decrease of the capital stock of a corporation is within the scope of section 687, and there are few if any cases from sister states, the English courts have construed similar provisions against the claimed authority.

In *Smith* v. *Goldsworthy*, 4 Adol. & E. (N. S.) 430, it was held that a provision "that for the better conduct and management of the affairs of the company, it should be lawful for a special general meeting called for the purpose, from time to time, to amend, alter, or annul, either wholly or in part, all or any of the clauses of the said deed, or of the existing regulations and provisions of the company," did not authorize a reduction of the number and value of the shares of the company. See, also, *Droitwich Patent Salt Co.* v. *Curzon*, L. R., 3 Exch. 35; *In re Ebbw Vale Steel, etc., Co.*, 4 Ch. Div. 827; *In re Financial Corporation*, (*Holmes' Case*), L. R., 2 Ch. 714; *Society* v. *Abbott*, 2 Beav. 559. For American cases, see *Granger's Life Ins. Co.* v. *Kamper*, 73 Ala. 325; *Salem Mill Dam* v. *Ropes*, 6 Pick. 23.

The power to dissolve does not carry the power to change the capital stock. Reducing the capital stock is practically the dissolution of the company and the organization of a new company. It did appear to me on the hearing that the proposed action of the home company was not a reduction of the capital stock, for the capital and assets of the company are to remain the same. It seems that since the organization the capital has been nominal, to the extent that only by estimation has the actual capital of the company been equal to the par value of the shares, and the proposed action now is but to write off the par value of the shares so that the par value and the estimated value may be equal, the actual capital not being affected—the actual stock being the same after the proposed action as before. It seems clear to me that the writing off the value of shares is such an infringement of the rights of property as can only be accomplished by consent, or a clear power given in the charter. However, I have concluded to treat the case as the parties have presented it, and not from this latter view. It seems perfectly clear

to me that the proposed action of the Home Insurance Company cannot be lawful over the protest of dissenting stockholders.

The injunction issued in the case will be perpetuated in the decree.

Reductions of capital stock of a corporation are not so common as increases thereof. Nevertheless there are a few cases in point.

In *Smith* v. *Goldsworthy*, 4 Q. B. 430; 12 L. J., Q. B. 192, the deed of settlement of a company incorporated by a special act declared, that it should be lawful for "a special general meeting to amend, alter or annul, either wholly or in part, any or all of the existing provisions of the deed, and to make any new or other regulations in lieu thereof; and such new regulations should" "be binding and conclusive upon the shareholders." The deed provided that the capital should be 2,000,000*l.*, divided into 20,000 shares of 100*l.* By resolutions, passed and confirmed at meetings duly convened and holden, it was resolved that the capital should be reduced to 1,000,000*l*, in 50*l.* shares. The Court of Queen's Bench *held* that such reduction was *ultra vires* of the company. DENMAN, C. J., said: "The amount of shares is properly part of the constitution of the company, and does not strictly depend upon any clause, resolution or provision of the deed. The alteration of shares seems, therefore, not to come within the meaning of the 29th clause (above quoted). * * * The defendant further argues that the effect of the resolution reducing the shares was to dissolve the company. We do not think any such effect followed, but rather that they were simply void and inoperative. We think the shares always were, in point of law, 100*l.* shares."

A similar conclusion is reached in *Droitwich Salt Co.* v. *Curzon*, L. R., 3 Ex. 42. In this case the capital stock was partially paid, and it was undertaken to reduce the nominal capital to the sum actually paid. KELLY, C. B., in refusing to permit the reduction, said: "If such a proceeding were permitted, the shareholders' liability would be limited not, as was intended, by the amount of their shares, but by the amount of the already paid up portion of their shares. Justice, the language of the act and the intention of the legislature, alike forbid an interpretation which would lead to such a result." It was further decided in this case, that if a new company, formed under a general incorporation act, could not, under that act, reduce its capital stock, an old one coming in to share the benefits of such act could not do so.

In re Ebbw Vale S. I. & C. Co., 4 Ch. Div. 829, arose under the English Companies Act of 1867, which empowered a company to reduce its capital, and required the reduction to be confirmed by order of court, and to be registered, &c. The nominal capital of the company was divided into shares of 32*l.* each, all of which were subscribed for. On all the shares (except a few which were paid in full) 29*l.* per share was paid, leaving 3*l.* per share to be called up. The capital having been partially lost through the depreciation of the property which represented it, the company desired to write off the loss, and for that purpose proceeded to take steps under the companies act for reducing their nominal capital. They accordingly resolved that the nominal capital should be reduced to a specified amount, and that each 32*l.* share should be reduced to 23*l.* by the extinction of 9*l.* per share, to the intent that the existing liabitity of 3*l.* per share on all the shares except those fully paid, should be preserved, that is, the new shares were to be deemed full paid to

the extent of 20*l.*, leaving the 3*l.* still due.

The application was refused on the ground that, as the nominal liability of the stockholders, namely the 3*l.* per share unpaid remained still due, there was in fact no reduction of the nominal capital. JESSEL, M. R., said: "Now, first of all, what does 'reduce its capital' (in the statute) mean, standing alone? I should think it meant an actual reduction. This is not an actual reduction because the capital has been lost. It is merely acknowledging that to be lost which is lost; 9*l.* per share is lost; 3*l.* per share remains to be paid up, and the company wish that 3*l.* to be still called up. All they want is to write off 9*l.* per share as loss. That is not reduction of capital; part of the capital has gone already; it has been reduced by a very unpleasant process. It requires no resolution of the company to do that:" *In re Ebbw Vale S. I. & C. Co.*, 4 Ch. Div. 832.

In *In re Financial Corporation*, L. R., 2 Ch. 714, the memorandum of association of a company provided that the capital should be 3,000,000*l.*, divided into 30,000 shares of 100*l.* each, "subject to be increased or modified," and the articles gave the board of directors power to divide the shares into shares of smaller amount. The directors exercised such power, and converted each 100*l.* share into five 20*l.* shares. *Held*, that such conversion was unauthorized and void, as not being authorized by the companies act.

It is, however, sometimes desirable that the capital stock of a corporation should be reduced. Accordingly, provision therefor has been made in some states by statute. See New York Statutes, for example (chapter 264, Laws 1878, N. Y.), providing in substance that whenever any company shall desire to call a meeting for "diminishing the amount of its capital stock, notice shall be published and served; a vote of two-thirds of all the shares of stock shall be necessary; a certificate shall be made and verified showing (1), the amount of capital actually paid in; (2), the amount of debts and liabilities; (3), the amount to which the capital stock shall be diminished; which certificate must be filed, with the approval of the comptroller, to the effect (1), that the reduced capital is enough for the corporate purposes; (2), that it is in excess of all debts and liabilities of the company, exclusive of debts secured by mortgage, and (3), that the actual market value of the stock before reduction was less than par. It will be observed that the objects sought to be obtained by this enactment were the protection of corporate creditors and the assurance of a fund sufficient to carry out the corporate purposes, and that it permits a reduction where either it was originally fixed at too high a sum or has become impaired, so that the nominal exceeds the actual sum. But it does not permit the distribution among stockholders of a sum equal to the difference between the nominal and the reduced capital, although if that sum may be taken out and yet leave capital of the company unimpaired and the creditors secure, it may be divided among shareholders as a surplus entitled to be distributed in dividends. *Strong* v. *Brooklyn Cross T. Rd. Co.*, 93 N. Y. 426.

And a statute (Gen. Stat. N. H., chap. 354, sect. 6) which authorizes a corporation, at any meeting called for the purpose, to reduce its capital stock and the number of shares therein, does not empower such corporation to effect such reduction by purchasing shares of a particular subscriber; unless a course is adopted which will work exact and even justice to all the owners of stock, the statute is inoperative: *Currier* v. *Lebanon Slate Co.*, 56 N. H. 262; see also *Gill* v. *Balis*, 72 Mo. 424; *Chetlain* v. *Republic Life Ins. Co.*, 86 Ill. 220; see also Pennsylvania Statute of 29th April 1874, sect. 23, P. L. 83.

There are not many cases bearing directly on the decrease of corporate stock. But there is a large number where such stock has been increased, and the validity of the proceeding has been passed upon. Incidentally, some of these cases discuss reduction of capital stock. And it is well settled that neither increase nor decrease of capital stock is within the power of the company, except where authority so to do is expressly conferred. See *N. Y. & N. H. Rd. Co.* v. *Schuyler*, 34 N. Y. 30; *Knowlton* v. *Congress, etc., Co.*, 14 Blatch. 364; 103 U. S. 49; *Railway Co.* v. *Allerton*, 18 Id. 235; *Oldtown Rd. Co.* v. *Veazie*, 39 Me. 571; *Spring Co.* v. *Knowlton*, 103 U. S. 49; 57 N. Y. 518.

ADELBERT HAMILTON.

Supreme Court of Michigan.

ATTORNEY-GENERAL v. BOARD OF COUNCILMEN OF THE CITY OF DETROIT.

A statute providing for the appointment in a city of a board of four commissioners to take charge of elections, two members thereof to be selected from each of the two leading political parties of the city, such board to appoint registers and inspectors of election from each of the two leading political parties is unconstitutional, as requiring an unlawful test for the holding of a public office.

Party representation being the main object of such a law, the court cannot treat it as not essential and sustain the commission by allowing the selection of its members without such a test.

The creation by statute of a board of commissioners for a city, having control of all the municipal elections and the appointment of election officers, is unconstitutional, as being a delegation of governmental powers and in violation of the settled principle that all officers exercising powers of government and control over municipal affairs must derive their power and office either from the people directly or from the agents or representatives of the people.

APPLICATION for mandamus.

The opinion of the court was delivered by

CAMPBELL, J.—The attorney-general applies for a mandamus to compel the respondents to take action upon certain nominations made by the mayor of Detroit of four persons, two being Republicans and two being Democrats, to act as a board of commissioners of registration and of election for the city of Detroit. Respondents refused to consider the nominations because they regarded the statute which provides for such board as unconstitutional and invalid. To an order to show cause they interpose that ground of defence. No other question is of much importance in the case. The necessity of an immediate decision, in order to allow time for the action of the city authorities in season for the coming election,